

**Statement of
Cari M. Dominguez, Chair
U.S. Equal Employment Opportunity Commission
before the
Subcommittee on the Federal Workforce and Agency Organization
Committee on Government Reform
House of Representatives
Hearing on
Establishing a Commission to Recommend Improvements for the Federal
Employees Appeals Process
July 11, 2006**

Chairman Porter, Congressman Davis, Members of the Subcommittee. Thank you for inviting me to testify today on this very important topic. I am Cari M. Dominguez, Chair of the U.S. Equal Employment Opportunity Commission (EEOC). As I have stated in previous testimony before this Subcommittee, I welcome and support your efforts to find ways to improve the efficiency and effectiveness of the federal EEO complaint and appeal processes.

We meet today to discuss a draft bill that would establish a Federal Employees Appeals Commission. The proposed Commission would be charged with reviewing the current appeals and grievance systems for federal employees. The systems to be studied include those used by the EEOC, Merit Systems Protection Board (MSPB), Federal Labor Relations Authority (FLRA) and the Office of Special Counsel (OSC) to enforce the various statutes encompassed by these agencies' respective missions. The focus of the proposed Commission's review would be on identifying redundancies or overlaps of responsibility or authority by these agencies, as well as any procedural ramifications of such overlaps. The proposed Commission would also look at

timeliness issues, particularly the amount of time that it takes the subject agencies to process matters brought before them. Twelve months after the Commission's first meeting, a report would be issued to the President and Congress containing recommendations on ways to improve the federal employee appeals and grievance systems, and other related areas.

When I appeared before this Subcommittee last November, my testimony described the role of the EEOC and the complaint processes we administer. I offered my firm belief that there is an urgent need to reform the federal sector complaint processing system. The current system is not ideal. Federal sector employees deserve better.

I share expressed concerns that the federal EEO complaint process is too slow, cumbersome and subject to real or perceived conflicts of interest. Unlike the processes of most the other agencies which receive complaints and grievances directly, an EEO complaint is filed with and initially processed by the federal agency accused of discrimination, and not the EEOC. The federal agency accused of discrimination investigates the complaint against it. EEOC is not involved unless the complainant requests an administrative hearing before one of our administrative judges. Almost always, the complaint has languished for more than 180 days at the agency where it was filed before the employee comes to EEOC to request a hearing. Even then, the complaint must return to the agency for final disposition. Thus, EEOC's ability to affect the processing of the complaint is extremely limited until late in the game when the matter is finally presented to us.

As I also noted in my earlier testimony before this Subcommittee, I believe that the primary area of EEO complaint processing most urgently in need of reform is the initial processing conducted by the agency where each complaint originates. It is this system lapse,

and not any jurisdictional overlaps or redundancies associated with the missions of the EEOC, MSPB, FLRA and OSC, which adversely affects overall complaint processing and undermines public confidence in the system. Even “mixed cases” involving both the EEOC and the MSPB affect fewer than 3% of the cases which come before us.

Notwithstanding the obvious internal control problems associated with federal agencies conducting their own investigations of discrimination complaints filed against them, many federal agencies have made real improvements in the timeliness of processing EEO complaints. In fiscal year 2004, it took federal agencies, on average, 469 days to close an EEO complaint. The average processing time for closures last fiscal year was 411 days, a 12% reduction, but still considerably more than the 270 days allowed by EEOC’s regulations for complaints without a hearing. Agencies also are becoming more efficient in investigating EEO complaints. In FY 2004, the average time for investigating a complaint was 280 days. The average for FY 2005 was 237 days. I am very encouraged that many of the federal agency heads to whom I have directed concerns about internal complaint processing have been receptive. The recent trends in decreased investigative times and enhanced resolution efficiencies are good signs of progress. Considerable work remains, however. Only 54.9% of agency investigations were timely completely in FY 2005, and only 25.5% of agencies met the regulatory time frames.

At EEOC, we have significantly reduced the processing times for the majority of cases that come before us. Our average processing time for hearings has declined to 249 days, a 29.9% reduction from FY 2004. Likewise, the average processing time for appeal closures dropped from 207 days in FY 2004, to 194 days in FY 2005. We are working to address resource and operational constraints which can affect the efficiency of our case processing, but there are no

indications of any impediment posed by any purported duplication of effort by our sister agencies MSPB, FLRA and the OSC. Yet, in spite of these gains, I continue to believe that the EEO complaint process can be further scrutinized for greater efficiencies and enhanced performance.

With respect to the draft bill, while I would welcome an independent review of these systems, I would propose another alternative. I would recommend that any commission studying this issue include independent, external experts who would bring to bear their extensive knowledge and expertise gained in a variety of settings, both in the public and private sectors. The National Academy of Public Administrators, the only Congressionally-chartered organization of its kind, would be ideally suited to help examine this issue from a comprehensive, independent, yet most knowledgeable perspective. Other appropriate consultative entities include Excellence in Government and the Partnership for Public Service. These reputable organizations not only apply higher-order thinking to these issues but also remove any questions or doubts pertaining to potential conflicts of interest or perceived self-interests.

Again, I thank you for the opportunity to comment on this draft bill, and greatly appreciate your leadership and support in this important aspect of our work.

I will be happy to answer any questions you might have.